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Utah State Prison
P.O. Box 250
Draper, Utah 84020

U.S. DISTRICT COURT

**FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH**

JUL 27 2012

D. MARK JONES, CLERK

BY

DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION**

Patrick Johnson,

Plaintiff,

v.

DR. RICHARD GARDEN, Medical Director,
at the Utah State Prison, individually;
DR. KENNON TUBBS, Medical Doctor,
at the Utah State Prison, individually;
DR. SIDNEY ROBERTS, Medical Doctor,
at the Utah State Prison, individually;
JOSEPH COOMBS, Physician Assistant,
at the Utah State Prison, individually;
TERRY JEFFRIES, Physician Assistant,
at the Utah State Prison, individually;
CHRIS ABBOTT, Physician Assistant,
at the Utah State Prison, individually;
JOHN DOES 1-10, Members of the
Clearance Review Committee, and
employees at the Utah State Prison,
individually,

Defendants.

Case: 2:12cv00720

Assigned To : Benson, Dee

Assign. Date : 7/23/2012

Description: Johnson v. Garden et al.

**CIVIL RIGHTS COMPLAINT AND
DEMAND FOR JURY TRIAL**

JURISDICTION

1. Plaintiff, Patrick Johnson, is a citizen of Utah, who presently resides at the Utah State Prison, P.O. Box 250, Draper, Utah 84020.

2. Defendant Richard Garden, M.D. is a citizen of Utah, and is employed as a Medical Director at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is Medical Director at the Utah State Prison for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

3. Defendant Kennon Tubbs, M.D. is a citizen of Utah, and is employed as a Medical Doctor at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Medical Doctor at the Utah State Prison for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

4. Defendant Sidney Roberts, M.D. is a citizen of Utah, and is employed as a Medical Doctor at the Utah State Prison at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Medical Doctor for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

5. Defendant Joseph Coombs is a citizen of Utah, and is employed as a Physician Assistant at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s)

alleged in this complaint arose, this defendant was acting under color of state law in that he is a Physician Assistant for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

6. Defendant Terry Jeffries is a citizen of Utah, and is employed as a Physician Assistant at the Utah State Prison at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Physician Assistant for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

7. Defendant Chris Abbott is a citizen of Utah, and is employed as a Physician Assistant at the Utah State Prison at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Physician Assistant for the Utah Department of Corrections, and is directly responsible for the wrongful actions alleged herein.

8. Defendant John Does 1-10, whose true names are unknown but are members of the Medical Clearance Review Committee, and when true names are ascertained the pleadings will be amended accordingly, are citizens of Utah, and are employed at the Utah State Prison. At the time the claim(s) alleged in this complaint arose, these defendants were acting under color of state law in that they are employees for the Utah Department of Corrections, and are directly responsible for wrongful actions alleged herein.

9. Jurisdiction is invoked pursuant to 28 U.S.C. Sec. 1343 (3); 42 U.S.C. 1983.

B. NATURE OF CASE

6. Plaintiff has a very serious medical problem with his shoulder, specifically his rotator cuff. Examinations have shown that Plaintiff suffers from a complete rotator cuff tear. This condition causes the Plaintiff a significant amount of pain and discomfort. Plaintiff reports he needs to have a reverse shoulder arthroplasty surgery performed. Plaintiff complains that Defendants, all medical staff at Utah State Prison, have acted with deliberate indifference to his serious medical condition, denying adequate medical treatment for his injured shoulder, causing the Plaintiff great pain and suffering.

7. Prior to Plaintiff being incarcerated, he was scheduled to have a reverse shoulder arthroplasty performed, at the recommendation of his private physician.

8. In or about September, 2009, Plaintiff was seen by Defendant Kennon Tubbs for his severe shoulder pain. Dr. Tubbs treated Plaintiff with non-steroidal anti-inflammatory drugs and noted that if Plaintiff's pain did not improve in the next few months, Plaintiff would consider a steroid shot.

9. On September 16, 2011, Plaintiff was again seen by Defendant Kennon Tubbs for a complete physical examination. Plaintiff reported to Defendant Tubbs that he had been seen by a private physician for shoulder surgery while he was not incarcerated, and had been awaiting

scheduled rotator cuff surgery. Defendant Tubbs started Petitioner on medication for pain control, but did not further treat Plaintiff's shoulder at that time.

10. On September 29, 2011, Plaintiff was seen by Defendant Chris Abbott, PA, at Plaintiff's request. Defendant Abbott informed Plaintiff that Plaintiff's medical records from Pioneer Valley Hospital had been received and reviewed by Defendant Tubbs, and an orthopedic appointment was scheduled for the Plaintiff. Defendant Abbott renewed Plaintiff's pain medication at that point in time, at Plaintiff's request.

11. On November 28, 2011, Plaintiff was given an MRI of his shoulder by the University of Utah. It was noted on the Final Report of this MRI that Plaintiff's infraspinatus tendon is completely torn, and near complete full-thickness tearing of the subscapularis tendon.

12. After Plaintiff received the MRI of his shoulder on November 28, 2011, he had to wait several months for Defendant Richard Garden, M.D., Director of Medical for Utah Department of Corrections, and Defendants John Does 1-10, Members of the Clearance Review Committee, and employees at the Utah State Prison, to make a decision regarding Plaintiff's requested shoulder surgery. During this point in time Plaintiff complains Defendants would only administer steroid shots to him, which Plaintiff said did not help reduce his pain.

13. In or about March of 2012, Plaintiff was notified by medical staff at Utah State Prison that the Plaintiff would not have enough time to get surgery completed on his shoulder, as his set parole date in September of 2012 was less than six months away.

14. As a result of the deliberate indifference to Plaintiff's serious medical needs, and denial of reverse shoulder arthroplasty on his injured shoulder, Plaintiff is in constant pain. Plaintiff suffers whenever he attempts to move his arm, and Plaintiff's pain is steadily increasing over time.

15. Defendant Kennon Tubbs, M.D., violated Plaintiff's constitutional rights to be free from cruel and unusual punishment, and violated Plaintiff's right to adequate medical care for his serious medical condition and needs, when he failed to further investigate Plaintiff's injured shoulder in September of 2009. Defendant Tubbs further violated Plaintiff's constitutional rights by failing to provide plaintiff with surgery on his injured shoulder.

16. Defendant Chris Abbott, P.A., violated Plaintiff's constitutional rights to be free from cruel and unusual punishment, and violated Plaintiff's right to adequate medical care for his serious medical condition and needs when he failed to provide plaintiff with surgery on his injured shoulder.

17. Defendant Richard Garden, M.D., Director of Medical for Utah Department of Corrections, violated the Plaintiff's rights by failing to approve surgery on his shoulder.

18. Defendant John Does 1-10, members of the Clearance Review Committee, violated the Plaintiff's rights by failing to approve surgery on his shoulder.

19. Due to the Defendants' actions, plaintiff has suffered cruel and unusual punishment and been subjected to additional pain and suffering, and plaintiff is entitled to punitive damages.

C. CAUSE OF ACTION

20. Plaintiff alleges that the following constitutional rights, privileges or immunities have been violated and that the following facts form the basis for the allegations:

1. Count I: Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment has been violated by Defendant Tubbs, in that Defendant Tubbs failed to provide adequate medical care for Plaintiff's serious medical condition. In addition, Defendant Tubbs, with deliberate indifference, failed to physically examine or provide testing to determine reason for Plaintiff's shoulder pain, and to determine what medical treatment the plaintiff needed in September of 2009.

2. Count II: Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment has been violated by Defendant Abbott's actions, in that he displayed deliberate indifference to plaintiff's serious medical needs by not sending Plaintiff for shoulder surgery.

3. Count III: Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment has been violated by Defendants Richard Garden, Director of Medical at Utah Department of Corrections, and John Does 1-10, Members of the Clearance Review Committee, when they deliberately denied a medical clearance for shoulder surgery.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

21. Plaintiff has not filed any other law suits in state or federal court dealing with the same facts involved in this action.

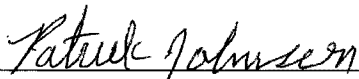
22. Plaintiff has previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of herein to no avail.

E. REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a) Trial by jury.
- b) That counsel be appointed to represent the Plaintiff in this action.
- c) That a reverse shoulder arthroplasty be performed on his left shoulder.
- d) Punitive damages in the amount of \$10,000.00.
- e) Compensatory damages in the amount of \$10,000.00.
- f) Grant attorney fees and court costs for this action.
- g) Such other and further relief the court deems just and proper.

DATED this 8th day of June, 2012.



Patrick Johnson,
Plaintiff

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1976. 18 U.S.C. Sec. 1621.

EXECUTED at Wahsatch, UT on June 8th, 2012.

Patrick Johnson

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PATRICK JOHNSON,
Plaintiff,

v.

DR. RICHARD GARDEN, et al.
Defendant.

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NOTICE BY CONTRACT ATTORNEYS

Case No.:

Judge:

 X This matter has been reviewed by the contract attorneys and filed per the
Plaintiff's request.

 This matter has not been reviewed by the contract attorneys at Plaintiff's request,
but is being filed by the contract attorneys at Plaintiff's request.

DATED this 18th day of July, 2012.

David J. Angerhofer
Wayne A. Freestone
Contract Attorneys